Subject Index.

Petition for Writ of Certiorari	Page
Names of the petitioners	1
Jurisdiction	2
Statement of the matter involved	2
Questions Presented	2
Reasons for the petition	4
Decision in conflict with other Federal decisions	5
Prayer	6
Brief in Support of Petition	
Opinion of the Court below, Jurisdicton, Statement of the matter involved, and Questions presented adopted from the Petition	7
Summary of the arguments	7
Discussion of our "reasons for the petition", Point A	9
Definitions	10
What was not and is not the thought of Congress,	
First Argument	12
Second Argument	13
Third Argument	14
Fourth Argument	15
Argument by Analogy, or Fifth Argument	16
What was and is the thought of Congress	18
Discussion of our "Reasons for the Petition", Point B,	21
Point C,	21
Point D,	22
A Short Refutation of the Court below	27

Table of Authorities Cited.

Statutes.	
Act of Congress approved March 2, 1917, Section 34, Paragraph 1, Petition	3
Same, on the Brief	9
Same, on the Brief	13
Same, Paragraph 19	16
Opinion, U. S. Court of Appeals, First Circuit	22
Same,	28, 29

CASES. Page

Adams v. Gossom, 129 S.W. 16-21, 228 Mo. 566 25
Bengzon v. Secretary of Justice, 299 U.S. 410, 416, 57 S.Ct. 252, 254, 81 L.Ed. 312 4, 31
Brown v. State Personnel Board, 43 Cal. App. (2d) 70, 110 P. (2d) 497 24
Brun v. Mann, 151 Fed. 142 25
Bunch v. U. S., 252 Fed. 678 26
De la Rosa v. Winship, 47 P.R.R. 312 27
Galliher v. Cadwell, 145 U.S. 373 24
Hayman v. Los Angeles, 17 Cal. App. (2d) 674, 62 P. (2d) 1047 24
Jonathan Mills Mfg. Co. v. Whitehurst, 60 Fed. 81 26
Kaifer v. Ohio Leather Co., 172 N.E. 280, 122 Ohio St. 476 25
Leon v. Fitzsimmons, 61 P.R.R. 340 27
Lukens v. Nye, 105 P. 593 31
MacMullan v. Kelly, 19 Cal. A. 700, 127, P. 819 24
Mills v. Porter, 222 P. 428 16, 31
Mobile & O. R. Co. v. Swain, 145 So. 627, 164 Miss. 825 25
Nowell v. Harrington, 89 A. 1098 16
Peebly v. Childers, 217 P. 1049 31
Rollestone v. National Bank of Commerce in St. Louis, 252 S.W. 394, 299 Mo. 57 25
State v. Holder, 23 So. 643 16
State ex rel. Wisconsin Tel. Co. v. Henry, 260 N.W. 486, 99 A.L.R. 1267 11
Stephens v. Dubois, 76 A. 656-660, 31 R.I. 138, 140 Am. St. Rep. 741 25
Strong v. People, 220 P. 999 31

DICTIONARIES AND ENCYCLOPEDIAS.

Century Dictionary 11
Murray's Dictionary 11
Shorter Oxford Dictionary 11
Webster's New International Dictionary 11
Corpus Juris, Vol. 33, 473 21

Supreme Court of the United States.

OCTOBER TERM, 1950.

PEDRO BLANCH and the persons hereinafter specified,
Petitioners,

v.

RAFAEL DE J. CORDERO, Auditor of Puerto Rico, and
RAFAEL BUSCAGLIA, Treasurer of Puerto Rico,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

To the Honorable Fred M. Vinson, Chief Justice, and Associate Justices of the Supreme Court of the United States:

Petition.

Your petitioners respectfully show:

Names of the Petitioners.

I. That the petitioners in this cause are Pedro Blanch and the persons specified in case No. 4451 of the U. S. Court of Appeals for the first Circuit, adjudicated against them by said Court on March 22, 1950. The names of the petitioners and the deductions made on their salaries by the Governor of Puerto Rico appear from the Transcript of

Record, pages 5 to 18, which pages the petitioners wish this Honorable Court to consider as an integrating part of this petition.

Jurisdiction.

II. That the jurisdiction of this Honorable Court to review by Certiorari the aforenamed judgment of the U. S. Court of Appeals for the First Circuit, is based on section 1254, Title 48 of the U. S. Code, which jurisdiction is hereby invoked.

Statement of the Matter Involved.

III. That the present case deals with the veto powers conferred by Congress upon the Governor of Puerto Rico. Its facts, shortly summarized, are as follows:

The petitioners filed in the District Court of San Juan, on June 16th, 1947, a Mandamus Complaint against the Auditor and the Treasurer of Puerto Rico, claiming the deductions illegally made on their salaries by the Governor of Puerto Rico at the time of approving the budget bill which was to be in force in Puerto Rico during the fiscal year 1932-1933. Said complaint (R. pp. 1-4) was dismissed by the aforenamed Court, (R. pp. 20-25), whereupon an appeal was taken to the Supreme Court of Puerto Rico, wherein the judgment of the District Court was affirmed, (R. pp. 27-30). From said judgment petitioners appealed to the U.S. Court of Appeals for the First Circuit, where the judgment of the Supreme Court of Puerto Rico was affirmed. (Certified Transcript of Record pp. 47-52).

Questions Presented.

IV. The law of Congress whereupon the Governor of Puerto Rico proceded to make the aforenamed deductions

on the salaries of the petitioners, in its pertinent section, paragraph 1 of Section 34, reads as follows:

> "If any bill presented to the governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving of the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items, parts or portions thereof to which he objects, and the appropriation so objected to shall not take effect."
>
> (Taken from "An Act to provide a Civil Government for Puerto Rico, and for other purposes," approved March 2, 1917, 39 Stat. 951, 961, 48 U.S.C. 825.)

The petitioners claim that by said sentences Congress authorized the Governor of Puerto Rico, if any bill containing several items of appropriation of money is presented to him for his approval, to object to one or more of such items, or to any part or parts, portion or portions of said bill, (of course the portion containing the appropriations), but they deny that the Governor of Puerto Rico is thereby authorized to object to a part or parts, portion or portions of the items contained *in such bill.*

The respondents hold, on the contrary, that by means of the aforesaid sentences, Congress conferred upon the Governor of Puerto Rico, if any bill containing several items of appropriation of money is presented to him for his approval, the power to object to one or more of such items, or to any part or parts, portion or portions *of the said items.*

The respondents also hold, and they have been sustained by the inferior courts therein, that the petitioners have been guilty of laches by bringing their action to court over four-

teen years after the deductions were made by the Governor. (R. p. 30)

Reasons for the Petition.

V. Petitioners deem that this Honorable Court should grant them the writ of Certiorari prayed for herein, because of the following reasons:

(A) Because after studying the definitions or meaning of the words used in the aforementioned sentences, specially the meaning of the words "thereof" and "item", and after being aware of the fact that the last part of the second sentence, above quoted, grants to the Governor of Puerto Rico the faculty of objecting only to whole, entire, complete appropriations in the bill, then it is clear that he cannot object to any part or parts, portion or portions of the items contained therein.

(B) Because the construction given to said sentences by the U.S. Court of Appeals for the First Circuit, which affirms the one given them by the Puerto Rican Courts, goes against the policy adopted by this Honorable Court in the case of *Bengzon* v. *Secretary of Justice,* (299 U.S. 410, 416, 57 S.Ct. 252, 254, 81 L.Ed. 312), to the effect that the action of a Governor which alters the purpose of the Legislature, as shown by its enacted law, is "affirmative legislation by executive edict" and therefore not allowable to such Governor.

(C) Because the construction given to the aforesaid sentences by the U.S. Court of Appeals for the First Circuit and by the Puerto Rican Courts have transmuted the Governor of Puerto Rico into a Financial Dictator in Puerto Rico, who may, at will, as he practically did in our case, change, item by item, the whole budget bill enacted by the

Legislative Assembly of Puerto Rico, by another one, entirely different in its economic contents, made by him, without ever giving any chance to the said Legislature to reject or even to approve the alterations made by him in the items contained in such bill.

And we say, Honorable Justices, that by means of that construction, not by the law of Congress itself, Puerto Rico has become the only place under the American flag where the will of the People, as represented by their Legislature, may be subdued and frustrated by the Governor, whereby Democracy in Puerto Rico is practically ruined.

Said decision, besides wrongly considering laches as local law in Puerto Rico, is in conflict with other federal decisions with regard to laches.

(D) Other reasons why this Honorable Court should, in our judgment, grant the remedy prayed for in this petition are the following:

1. That the decision of the U.S. Court of Appeals for the First Circuit above referred to, involves the wrong conclusion that the doctrine of laches is local law in Puerto Rico, and that, therefore, it will not disturb the judgment of the Supreme Court of Puerto Rico wherein it is said that the lapse of fourteen years from the time in which the right originated to that in which the action was instituted is sufficient cause (by itself), for dismissing the action of the petitioners.

2. That said decision is in conflict with other Federal decisions on the same subject and on the following points:

(a) It does not take into consideration the fact that our action was instituted within the limits of time allowed by law, and that no detriment whatever is caused thereby to

the respondents, while the other Federal decisions hold that the principle of laches has no application when the action is brought within the time granted by the statute of limitations, unless there are unusual conditions claiming for its application, none of which exist in our case.

(b) The aforesaid decision disregards the point that the doctrine of laches is never applied to work an injustice upon any person, while the other federal decisions state that the doctrine of laches is applied to promote, never to defeat, justice.

WHEREFORE your petitioners pray this Honorable Court that the U.S. Court of Appeals for the First Circuit and counsel of record for the adverse party be notified of the granting of the application herein made, praying also for a reversal of the judgment rendered against them, and that a new judgment be entered granting their petition in the mandamus complaint filed in the District Court of San Juan, Puerto Rico, on June 16, 1947, with whatever other relief that this Honorable Court might see fit to grant them in the present case.

San Juan, Puerto Rico, this 2nd day of June, 1950.

F. FERNANDEZ CUYAR,
ARTURO O'NEILL,
By: ARTURO O'NEILL,
Attorneys for Petitioners.

BRIEF IN SUPPORT OF PETITION.

Opinion of the Court Below,
Jurisdiction,
Statement of the Matter Involved,
and
Questions Presented Adopted from the Petition.

In order to make this brief as short as possible, the petitioners wish this Honorable Court to consider as adopted by them and made a part hereof, the date of the Opinion of the Court below, the place in the Certified Transcript of Record where it is found, the jurisdictional statement, the statement of the matter involved, and the questions presented, all of which are contained in paragraphs I, II, III, and IV of our Petition for the writ, accompanied hereto.

We shall, therefore, consider only, in this brief the "Reasons for the Petition", therein named. But before we go more extensively into the subject let us make a short

Summary of the Arguments.

The petitioners base their right to the writ prayed for in the foregoing petition, on the following points:

(A)—That the U. S. Court of Appeals for the First Circuit misinterpreted two sentences relating to the veto powers conferred upon the Governor of Puerto Rico, contained in paragraph one, Section 34 of a law of Congress approved on March 2, 1917, entitled "An Act to provide a Civil Government for Puerto Rico and for other purposes", known as the Organic Act of Puerto Rico, (48 U.S.C. 825), which sentences are quoted under paragraph IV of the Petition.

The contention of the petitioners is that the intention of Congress in drafting those sentences was to authorize the Governor of Puerto Rico, in case any bill containing several items of appropriation of money is presented to him for his approval, to object to one or more of such items, or to any part or parts, portion or portions of said "*bill*", but that he was not authorized, as held by the respondents, to object to any part or parts, portion or portions of such *items*.

This contention of the petitioners is built upon the definition and meaning of the words "item", "thereof", "other", "part", "portion", and "appropriation", used in those sentences, and upon a comparison of the meaning of said sentences with paragraph nineteen of the Organic Act of Puerto Rico, which by analogy helps us to find the true meaning of the sentences under consideration.

(B)—That the construction of said sentences made by the U. S. Court of Appeals for the First Circuit contradicts the policy adopted by this Hon. Court in the case of *Bengzon* v. *Secretary of Justice*, 299 U.S. 410-416, to the effect that the action of a Governor of altering the purpose of a Legislature, as shown by its enacted law, "is affirmative legislation by executive edict" and, therefore, denied to such Governor.

(C)—That the application in Puerto Rico of such construction of the law violates basic principles of American Constitutional Law, as the Executive encroaches thereby on the Legislative branch of the Government, with the serious result that the will of the People, as represented by its Legislature, is subdued and frustrated by the Governor.

(D)—That the decision of U. S. Court of Appeals

for the First Circuit holding as good and reasonable the adjudication made by the Supreme Court of Puerto Rico on the point that the petitioners were guilty of laches, simply because of the fact that they brought their action into court over fourteen years after the origination of their right, is in conflict with the decisions of other U. S. Courts of Appeals, which hold that if the action is brought within the limitation of time fixed therefor by the statute (as it is the case of the petitioners), the doctrine of laches cannot be applied, unless unusual conditions (which do not exist in our case), invoke its application.

The aforesaid decision disregards the principle that laches is never applied to work an injustice, conflicting therein with other Federal decisions.

Discussion of Our "Reasons for the Petition."

Point A

To the end of facilitating our study under this subdivision, which is the one relatively difficult in our case, we deem it best to quote herein the alluded sentences of the aforesaid law:

> "If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving of the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items, parts or portions thereof to which he objects, and the appropriation so objected to shall not take effect."

Of those sentences, two different interpretations have been made:

(1)—That Congress granted to the Governor of Puerto Rico, in case any bill containing several items of appropriation of money is presented to him for his approval, the faculty of objecting to one or more of such items, or to any part or parts, portion or portions *of said items.*

(2)—That Congress granted to the Governor of Puerto Rico, in case any bill containing several items of appropriation of money is presented to him for his approval, the power of objecting to one or more of such items or to any part or parts, portion or portions *of said bill.*

As the interpretative problem arises when we try to find out which is the true antecedent for the relative adverb "thereof" in said sentences, whether it is the word "items" or the word "bill", we have considered it indispensable to see what the real meaning of the words "item", "thereof", "other", "part", "portion", and 'appropriation"', truly is.

Definitions.

The word "item", as defined by the Shorter Oxford Dictionary, means "an article or unit of any kind" . . . Said word, according to the Webster's New International Dictionary, means ". . . a separate particular in an enumeration . . .". Going into the definition of the word "particular", and of the word "individual", implied in its meaning, we may safely come to the conclusion that an "item" is "an individual unit of any kind"; "a unit not divisible into separable parts".

The word "thereof", as it appears from the most authoritative dictionaries of the English language—the Century,

the Murray's, the Shorter Oxford, and the Webster's New International—means "of that; of it".

The words "part", "portion", "other", and "appropriation", as defined by the Webster's New International (our preferred one), mean, respectively: "Part, a constituent or fraction of a whole; Portion, an allotted part; Other, that which remains of two, as distinguished from that which is specified . . . ; and, Appropriation, money set apart by formal action to a specific use".

We should not forget that a legislative item is simply an individual appropriation, a line in the budget bill, as, for instance, the item: "District Attorney of San Juan, . . . $8,000.00".

It is very important to notice that said item, like anyone else in the budget bill, is made up of two parts: (1) the object of the appropriation; and (2) the appropriation for said object, but that both parts constitute an indivisible, inseparable unit.

This inspection of the legislative item confirms, as we see, the definition of *appropriation* already quoted: "Money set apart . . . for a specific use", and shows at the same time, that the legislative item is not made up of separable parts, and still less, of separable portions or "allotted parts".

We should not forget, either, that it has been decided that "the word *part* is broader than the word *item*" (*State ex rel. Wis. Tel Co.* v. *Henry*, 260 N.W. 486, 99 A.L.R. 1267).

As we are lawyers, and even if we were not, we do not need of any definition to know what a legislative bill is, nor to know that a budget bill is made up of thousands of items, clustered into different portions or parts to cover the expenses of the distinct departments and divisions therein, of which the government is composed. This anyone can discover by simply looking at a budget law.

Once in possession of those notions, and keeping in mind the aforesaid definitions, we are duly equipped to determine what was or is, and what was not or is not, the thought or intention of Congress with regard to the veto powers conferred upon the Governor of Puerto Rico in the above quoted sentences. Following the order stated regarding the two constructions which of the said sentences have been made, and taking into consideration that the first one is the one adopted by the U.S. Court of Appeals for the First Circuit, we shall begin our analysis by the negative proposition:

What Was Not and Is Not the Thought of Congress.

First Argument

We have already seen that a budget bill contains thousands of items and that those items are clustered into parts or portions of the bill, corresponding to the different departments of the government and the subdivisions therein. We have seen, too, that an "item", by definition as well as in reality, is simply "a separate particular", "a unit, an individual unit of any kind". Then when in doubt as to which is the true antecedent for the word "thereof" in the sentence:

"If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof . . .", we already know that the word "items" cannot be the true antecedent for the relative "thereof", because the item, as we have seen, is only "an individual unit of any kind", and that as such unit it is the least expression of the legislative will, not made up of any number of separable parts nor portions, or "allotted parts", as shown above.

But, on the contrary, when in doubt as to which is the real antecedent for the word "thereof" in the said sentences, we know that it must be the word "bill", which is the one of the two antecedents that is composed of items, clustered into parts and portions, that is, the only possible antecedent which contains items, parts, and portions.

Second Argument

Let us remember what was formerly said about the meaning of the word "thereof" and apply it to the interpretation of the above quoted sentences. Let us remember that its true meaning is: "of that; of it".

Now, if we substitute the word "thereof" in the said sentences by its equivalent "of it", we get the following result:

"If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions *of it* . . .".

What does that "it" stand for in the sentence? Undoubtedly, for the word "bill". We see this conclusion clearer still if we make the same substitution in the next sentence of the same law. The substitution being made, the sentence reads as follows:

> "In such case he shall append to the bill, at the time of signing it, a statement of the items, parts, or portions *of it* to which he objects, and the appropriation so objected to shall not take effect."

This substitution makes clear that, since the relative "thereof" refers to its proper antecedent "bill", the meaning or thought of Congress in the first one of the above transcribed sentences is that the Governor of Puerto Rico

may object to one or more items, or to any part or parts, portion or portions of the bill (of course the portion containing the items), and not as held by the respondents, that the Governor of Puerto Rico may object to any part or parts, portion or portions of the items, each one of which, as we have seen, is not composed of any number of separable parts or portions.

Third Argument

Another argument to show that the interpretation of the above mentioned sentences adopted by the U.S. Court of Appeals for the First Circuit is not the correct one, is this: That the Governor of Puerto Rico never objects, and we cannot think of him as objecting, to parts or portions of an item. Let us see how this is.

Let us suppose that the Governor of Puerto Rico wants to reduce the salary of the Warden of the Penitentiary, for instance. And let us suppose, too, that the salary of said employee is $5,000.00, and that the Governor wants to cut off from that salary the sum of $1,500.00, or the sum of $2,000.00, or even the sum of $3,000.00. Whatever sum he deducts from that salary is always a part, only a part, however big, of the said salary or item.

Now, if we hold the meaning of the law to be that the Governor may object to a part and also to parts, and in addition, to portion or portions of the item, as he can, in reality object only to a part of any item, then the remaining words in the quoted first sentence, i.e.: "parts, portion or portions thereof", would be meaningless therein.

But a construction which makes meaningless or disregards a portion of the law cannot be a good construction and should not be adopted, specially if there is another one wherein full force and effect are given to each and every word of the law.

Fourth Argument

Perhaps the most important argument to ascertain that it was not the thought or intention of Congress to authorize the Governor of Puerto Rico to object to a part or portion of an individual item, that is, to reduce the item, comes from the law itself. We are referring to the last part of the second sentence above quoted. Said portion of the law, after stating that the Governor shall append to the bill, at the time of signing it, the items, parts and portions thereof (of it) to which he objects, goes on to say . . . "and the appropriation so objected to shall not take effect".

This clause in the sentence clearly indicates that the intention of Congress was to authorize the Governor of Puerto Rico to object only to entire, whole, complete items of appropriation. If Congress would have thought of granting to said Governor the faculty of objecting to any part of an individual appropriation, it might have been very easy to do it by simply saying in that sentence: and the appropriation or any part thereof so objected to, shall not take effect.

But Congress did not say so. It simply said: ". . . and the appropriation so objected to shall not take effect", and we all know that in Constitutional Law the legislative powers granted upon the Executive should be strictly construed.

Furthermore, in view of such provision in the law, the action of the Governor of objecting to a part of the appropriation is enough, in our judgment, to destroy the whole item. Our conception of this point is as follows:

When a governor objects to that part of the item which constitutes its appropriation, it is, undoubtedly, because he objects to its amount. But the moment he objects to the amount of the item, he is objecting to the item itself. Now, an item in the budget bill is an individual appropriation therein, and if the law states that the appropriation objected to by the Governor shall not take effect, then, as the

item reduced by the Governor is an appropriation objected to by him, his reduction of the item destroys the whole appropriation represented by it.

The cases supporting this view are the following:

State v. *Holder,* 23 So. 643;
Nowell v. *Harrington,* 89 A. 1098;
Mills v. *Porter,* 222 P. 428.

That being the situation, if the Governor of Puerto Rico had not thus illegally objected to or reduced the salaries of such a majority of all the officers and employees of The People of Puerto Rico in the year 1932, so as to leave the government without the necessary appropriation for its support, in which case, by provision of the Organic Act, the budget law approved for the preceding year shall govern, if those were not the conditions, the present case would have never been brought to court.

Argument by Analogy

or

Fifth Argument.

There is yet another argument to show that the intention of Congress was not to authorize the Governor of Puerto Rico to reduce the items. It is this:—Paragraph 19 of said Section 34 of the Organic Act of Puerto Rico reads as follows:

> "In case the available revenues of Puerto Rico for any fiscal year, including available surplus in the Insular Treasury, are insufficient to meet all the appropriations made by the Legislature for such year, such

appropriations shall be paid in the following order, unless otherwise directed by the Governor:

"First class.—The ordinary expenses of the legislative, executive, and judicial departments of the State government, and interest on any public debt, *shall first be paid in full.*

"Second class.—Appropriations for all institutions, such as the penitentiary, insane asylum, industrial school, and the like, where the inmates are confined involuntarily, *shall next be paid in full.*

"Third class. — Appropriations for education and educational and charitable institutions, *shall next be paid in full.*

"Fourth class.—Appropriations for any other officer or officers, bureaus or boards, *shall next be paid in full.*

"Fifth class.—Appropriations for all other purposes *shall next be paid.*" (Italics supplied.)

Now we say: If in the presence of such an emergency, when a reduction in the salaries of all public officers and employees would perhaps be the wisest and most equitable solution to the existing problem, the Governor is not given the power to reduce any of the items approved, how could it be logical to conceive that in common, ordinary circumstances he was authorized to reduce the salaries of such officers or employees?

Had the intention of Congress in paragraph one of this same Section been to enable the Governor of Puerto Rico to scale down, at will, the salaries of public officers and employees, how is it that eighteen paragraphs later on, when speaking of facing a financial crisis, the power above sup-

posedly given is not here repeated, even in the presence of a much greater need?

The fact that Congress is here referring to a budget law and not to a budget bill does not change the situation, because if it had been its mind to authorize the reduction of the items, it could have provided that, in facing such an emergency, the Governor could order a reduction on all unpaid salaries from the time the crisis is viewed till the end of the fiscal year.

But, even anticipating that conjuncture, the Governor is not authorized to order any reduction of the items or salaries. On the contrary, Congress specifies that all governmental obligations, as therein named, *shall be paid in full*, or, as stated in a succeeding paragraph, when there is no possibility of paying the remaining obligations in full, they shall be paid on a pro rata basis, that is, on an arithmetical proportion, and not at the will of the Governor.

What Was and Is the Thought of Congress.

We have seen how many intellectual and juridical difficulties have been encountered on examining the first of the two interpretations given to the above quoted sentences of the Organic Act of Puerto Rico. Let us examine now what really was and is the thought of Congress in the aforesaid sentences, that is, let us see if the second of the said interpretations is the right one or not.

A meditative analysis of said sentences leads us to the conclusion that in drafting them Congress conceived of any bill containing several items of appropriation of money which might be presented to the Governor of Puerto Rico for his approval, as composed of two portions: that which might be objected to by him, and that which he might straightly approve.

With regard to the portion of the bill to which the Governor might object, Congress goes on to specify what it is in that portion to which he may object, and expressly provides that the Governor "may object to one or more of such items, or any part or parts", (remember that it has been decided that *part* is broader than *item*), "portion or portions thereof", (that is, of the bill, "of it") "*while approving of the other portion of the bill.*" (Italics supplied.)

This we see clearly if we remember that the definition of the word "other" as an adjective, that is, as used in that sentence, means "(That) which remains of *two*, as distinguished from that which is specified; . . ."

When Congress said "while approving of the other portion of the bill", undoubtedly that it thought of a previously mentioned portion of that bill, and that previously mentioned portion of the bill was that about which it thought that the Governor might object, and to which it had given him the authority to object as herein stated.

That seems to us to be the real thought of Congress.

Using such interpretation, the Governor may cross out any number of portions or parts of the bill, if he deems that advisable, without any need of objecting to them item by item, as he must do now with the prevailing interpretation. As we see it, Congress, when bestowing negative legislative powers upon the Governor of Puerto Rico, described them in an increasing, ascentional grant: He may object to one or more items: he may object to one or more parts; he may object to portion or portions of the bill. But he can go no farther. He cannot divide the appropriation for the item into parts and portions in order to object to a part of it. That is forbidden land.

This construction keeps within "constitutional limitations" the veto powers granted by Congress to the Governor of Puerto Rico.

This interpretation agrees entirely with each and every word of the law, without any possible reasonable objection, excepting, however, the fact that the Governor can only object to that portion of the bill which contains the items, as stated in the last part of the second sentence above quoted.

Let us examine this assertion.

If this, interpretation (2), is adopted, the objection with regard to the meaning of the word "item" is not tenable, because therein said word is given its correct meaning; the objection with regard to the meaning and use of the word "thereof" is not tenable, either, because in this interpretation there is not the logical and grammatical repugnancy which follows its connection with "items" as its possible antecedent, (that repugnancy comes, as we have seen, from the fact that the meaning of the word "item" makes it impossible for us to conceive it as made up of separable parts or portions); and furthermore, there the word "thereof" is given its true meaning, too.

By the adoption of this second interpretation,—interpretation (2)—, we are safe against the objection of leaving words without any meaning or effect in the law; and free also from the logical absurdity that is brought upon us by the action of the Governor of reducing the item, which in our law means its destruction, its death, and at the same time keeping it alive, as reduced, re-created by him; and finally, against this interpretation the argument by analogy, or the discrepancy formerly shown between two portions of the law, is not possible, either, because by it the power of objecting to part or parts, portion or portions of the individual item is not granted in paragraph one, as it is not granted in paragraph nineteen of the same Section of the said law.

To this construction, truly there are no objections, that

we can see. That is really, to our minds, what the law says. That was and is, in our judgment, the true thought or intention of Congress. In other words: if this construction is adopted, we are at peace with human intellect and culture; if it is not, conflict therewith is flagrant.

In view of the situation, we deem it right to recall a most valuable legal maxim, which reads as follows:

"In cases of ambiguity such interpretation should always be made, that what is inconvenient and absurd may be avoided."—33 C.J. 473.

The many inconveniences brought upon us, as reasonable human beings, by interpretation (1)—the one adopted by the U.S. Court of Appeals for the First Circuit—conclusively advise us to discard it entirely, no matter how much we regret our disagreement with such esteemed authority.

Discussion of Our "Reasons for the Petition."

Point B

Petitioners herein, for the sake of brevity, adopt and wish the Honorable Justices to consider as adopted and made a part hereof, what is stated under letter (B) in the Petition, as our whole argument herein.

Discussion of Our "Reasons for the Petition."

Point C

Petitioners, for the same reason above given, adopt and wish the Honorable Justices to consider as adopted and made a part hereof, what is stated under letter (C) in the Petition, as our whole argument herein.

Discussion of Our "Reasons for the Petition."

Point D

The decision of the U.S. Court of Appeals for the First Circuit regarding the matter of laches, states as follows:

> "Moreover, the question of laches has been decided adversely to the plaintiffs by both insular courts and we see no reason to disturb this conclusion of local law on the ground that it is 'inescapably wrong' or 'patently erroneous'" (Certified Transcript of Record, p. 51).

One of the foundations of the appeal taken by the petitioners from the Supreme Court of Puerto Rico to the aforesaid U.S. Court of Appeals is that said Supreme Court held the petitioners guilty of laches simply because of their delay in bringing their action to court (R., p. 30).

We stated in our Brief for said Court of Appeals that in order to plead successfully the defense of laches, there must exist, besides the lapse of a certain, undetermined period of time, some prejudice to the party pleading said defense, and that in our case no prejudice is caused to the defendants nor to any other person or entity in Puerto Rico, by the delay of the petitioners in instituting their action. We showed said assertion to be true by stating that nothing is claimed personally from the defendants, respondents herein, and nothing is asked from The People of Puerto Rico which it had not already granted to the petitioners by the enacted law. And we stated, further, that there has been no change in the situation or condition of the parties, no transfer of property to third persons, and no evidence lost, so that our case is just as if it had been instituted a month or two after the deductions were made by the Governor.

Now, the court below, undoubtedly recognizing that we are right in our said assertion, does not say anything on the subject, but states simply that laches, being a matter of local law, they will not disturb the decision made on the subject by the Supreme Court of Puerto Rico.

But that is a terribly mistaken assertion. No one can show a law in Puerto Rico establishing the doctrine of laches in the Island. On the contrary, it is recognized in Puerto Rico that the doctrine of laches belongs to the Anglo-American law system, and that it is applied in Puerto Rico in some remedies adopted from Anglo-American law. Let us hear what the Supreme Court of Puerto Rico has to say on the subject:

> "Since the action for accounting in this jurisdiction is governed by the Civil Code in force, which in turn adopted it from the Spanish Civil Code, the defense of laches is not applicable thereto. Such a defense is an *equitable doctrine* which does not apply to actions at law for which a limitation period is provided." (Italics supplied.) (Taken from *Serrano* v. *Talavera*, 65 P.R.R. 412, Syllabus.)

In the body of the Opinion it is said:

> "We accept that in this jurisdiction the doctrine of laches has often been applied, but it has always been in connection with extraordinary remedies taken from the Anglo-American law."—*Ut supra*, p. 415.

If the doctrine of laches is used in Puerto Rico with regard to extraordinary remedies imported from Anglo-American law and there is no law in Puerto Rico changing the nature of the doctrine, then it seems reasonable and

just that the imported doctrine be applied in Puerto Rico as it is applied in the United States. But we all know that in order to apply successfully the defense of laches in the United States it is essential that some prejudice be brought on the defendant by the delay of the plaintiff in bringing his action. (*Hayman* v. *Los Angeles,* 17 Cal. App. (2d) 674, 62 P.(2d) 1047; *Brown* v. *State Personnel Board,* 43 Cal. App. (2d) 70, 110 P. (2d) 497; *MacMullan* v. *Kelly,* 19 Cal. A. 700, 127 P. 819. In the second one of these cases, year 1941, it is stated: "If the delay has caused no material change in statu quo ante, i.e., no detriment suffered by the party pleading laches, his plea is in vain".)

Then in Puerto Rico, where no legal modification of the rule has been made, if applied, it must be applied the way it is used in the United States. But the Supreme Court of Puerto Rico, in the case of the petitioners, has identified the principle of laches with the rule of limitation of actions, when it says that the plaintiffs were guilty of laches because they allowed fourteen years to elapse from the time their action originated to that in which it was instituted, which identification, as we know, is entirely wrong.

This Honorable Court, in the case of *Galliher* v. *Cadwell,* said the following:

> ". . . laches is not, like limitation, a mere matter of time; but principally a question of the inequity of permitting the claim to be enforced—an inequity founded upon some change in the condition or relations of the property or the parties".—145 U.S. 373.

There are many cases, as this Court knows, holding that laches is not mere delay, but a delay that works a disadvantage to another, that is, to the party pleading laches. Of those many cases we are going to mention only five. These

are *Stephens* v. *Dubois*, 76 A. 656-660, 31 R.I. 138, 140 Am. St. Rep. 741; *Mobile & O. R. Co.* v. *Swain*, 145 So. 627, 164 Miss. 825; *Rollestone* v. *National Bank of Commerce in St. Louis*, 252 S.W. 394, 299 Mo. 57; *Kaifer* v. *Ohio Leather Co.*, 172 N.E. 280, 122 Ohio St. 476; *Adams* v. *Gosson*, 129 S.W. 16-21, 228 Mo 566.

Therefore, affirming the decision of the Supreme Court of Puerto Rico which identifies laches and limitation is, to our judgment, unfounded and wrong.

But the aforenamed Court of Appeals not only erred in considering laches as local law in Puerto Rico and sanctioning its identification with the principle of limitation of actions, but it erred in something more important:

Said Court knew that the action of the petitioners was brought within the period allowed by the statute of limitation in Puerto Rico, (fifteen years, according to Section 1864, Civil Code of Puerto Rico, 1930 edition; respondents have never denied such fact), and said Court knew that there are no unusual conditions in our case calling for the application of the doctrine of laches against the petitioners, yet it adjudicated them guilty of laches. By so doing, the decision of the U.S. Court of Appeals for the First Circuit has come to be in conflict with two decisions of the U.S. Court of Appeals for the Eighth Circuit and with a decision of the U.S. Court of Appeals for the Sixth Circuit. Let us see which are and the contents of those decisions: In the case of *Brun* v. *Mann*, 151 Fed. 142, (quoting from the syllabus) it is said:

> "The doctrine of laches is an equitable principle which is invoked to promote, but never to defeat, justice. It has no function where the analogous action at law is not barred and no unusual conditions invoke its application."

This is a case decided by the U. S. Court of Appeals for the Eighth Circuit, formerly, as we all know, Circuit Court of Appeals for the Eighth Circuit.

In the case of *Bunch* v. *U. S.*, 252 Fed. 678, also from the Eighth Circuit, the Court said:

> "The doctrine of laches is an equitable principle which is applied to promote, but never to defeat, justice. It has no function when the analogous action or proceeding at law is not barred, and no unusual conditions invoke its application within the time fixed by the statute of limitations in the analogous action at law in order to secure a just result."

There is also a decision from the U. S. Court of Appeals for the Sixth Circuit to the same end, that is, that the doctrine of laches is not applicable in any case where the action is brought within the period specified in the statute of limitations, to wit: The case of *Jonathan Mills Mfg. Co.* v. *Whitehurst*, 60 Fed. 81, where, (copying from the syllabus), it is said:

> "In a suit for the infringment of a patent, the doctrine of laches does not apply to a delay short of the statutory limitation in setting up the defense that plaintiff had no right in the patent which he sues on."

The words of the Court were:

> "The doctrine of laches does not apply to such a case unless the statute of limitations would be a bar."—Ut supra, p. 82.

Not being authorized by Congress, as we have seen, to reduce the items, the reductions made by the Governor of

Puerto Rico in the salaries of the petitioners (items in the budget bill for the fiscal year 1932-1933) were unwarranted and, of course, arbitrary, being, therefore, unjust to the petitioners. Yet the respondents have used the defense of laches (sanctioned therein, against precedents, by the Court below), not to promote but to defeat justice; in other words: to rivet an injustice.

A Short Refutation of the Court Below.

We have explicitly refuted the decision of the Court below with regard to the question of laches; we have refuted the interpretation made by said Court regarding the aforenamed sentences of the Organic Act of Puerto Rico, but we have not refuted the arguments which have lead said Court to its conclusion, and we think that we should briefly do it.

In the first place, the said Court states that our contention on the point that the word "thereof" has reference to the word "bill" and not to the word "items" was rejected "after full consideration by the Supreme Court of Puerto Rico in *De la Rosa* v. *Winship,* 47 P.R.R. 312 and again in *Leon* v. *Fitzsimmons,* 61 P.R.R. 340".

This, Hon. Justices, is an entirely mistaken statement. The Supreme Court of Puerto Rico never went deeply into the interpretative problem presented to it in the case of *De la Rosa,* supra. It is true that the petitioner helped that Court very little in its study of the question presented, as we see from its statement: "No rule of grammatical construction is cited in support of this view", but there is no analysis on the part of the Court regarding the question submitted. The only interpretative explanation given by said Court for holding its view on the matter is simply this: "When Congress said that the Governor 'may object to one

or more of such items or any part or parts, portion or portions *thereof* it meant, *we think,* that he may object to one or more of such items, or any part of parts, portion or portions of such items". *De la Rosa, supra,* p. 314. (Italics supplied.)

That is the whole of what the Supreme Court of Puerto Rico said in analysing the interpretative problem submitted. It said nothing with regard to the meaning of the word "thereof", nor with regard to the meaning of the words "item", "other", "part", "portion" nor "appropriation."

It considered not the argument by analogy; in fact, it did not make any interpretative study of the matter presented.

In the case of *Leon* v. *Fitzsimmons,* supra, the Supreme Court of Puerto Rico transcribed, without any further study, what it said in the case of *De la Rosa* on the interpretative question submitted.

But what is more important is that the Court below, in spite of our furnishing it all the arguments herein formerly expounded, said nothing with regard to four of them and refuted only what we said with regard to the meaning of the word "thereof", just by saying that said word is sometimes used with a plural antecedent.

Its only argument against us is the one referring to the amendment introduced in the Senate of the United States to the sentences above quoted. As we can see from the Certified Transcript of Record, p. 50, it goes as follows:

The Act, as originally introduced, gave the Governor power merely to object to "one or more of such items". The amendment inserted, after the word "items", the addition "or any part or parts, portion or portions thereof". Now, the Court below referring to the amendment says:

> "There is no illluminating discussion of this amendment available, but the amendment is meaningless sur-

> plusage unless it was intended to give power to veto a part or portion of an item, in other words, to reduce it, as well as to strike it out altogether. Power to veto parts or portions of an appropriation bill adds nothing to the power to veto any or all of its individual items."

The Court, conscious of another possible interpretation for the amendment, goes on and says:

> "Perhaps the amendment might be construed as adding power to veto generally entire sections or subdivisions of an appropriation bill, if such a bill should be subdivided into parts or portions, but we do not think this meaning could have been intended, for the Organic Act does not require that budget bills shall be subdivided into parts and portions."

To this construction we can interrogate: Does not the concept of what an item is go against such construction? Being an item simply an individual appropriation, a line in the budget bill, can we conceive the Governor of Puerto Rico as objecting to portions or allotted parts of any such line?

Still another question may be made: If the purpose of the amendment was to authorize the Governor to object to a part of or to reduce an item, why not simply add to the faculty of objecting to "one or more of such items", already granted in the bill, the simple words *or any part thereof?* Why add the words "or parts, portion or portions thereof" if they wanted only to authorize the Governor to object to *one or more of such items or any part thereof*, thus leaving without any meaning the words "or parts, portion or portions thereof" used in the sentence?

Undoubtedly if the purpose of the amendment was, as

understood by the Court below, to authorize the Governor to object to a part of an item, then the words "or parts, portion or portions thereof" would really be mere surplusage therein. On the contrary, the intention of Congress being construed to be that the Governor of Puerto Rico may object to one or more of the items contained in the bill, and also to any part or parts, portion or portions of said bill, then there are no idle words in the sentences, there is no surplusage whatever in them, as formerly shown herein.

With regard to the part of the argument of the Court below relative to the fact that the said bill would have gained nothing by the addition of the words "or any part or parts, portion or portions thereof" if they are used with reference to the word "*bill*", because "power to veto parts or portions of an appropriation bill adds nothing to the power to veto any or all of its individual items", we must say the following:

That by so authorizing the Governor to object to parts or portions of the appropriation bill, the powers of the Governor are in truth magnified, as he may then cross out whole parts or portions of the bill, power not given to him before the amendment was introduced, thereby saving for him the time to be spent in objecting one by one to the individual items contained in the part or parts, portion or portions of the bill to which he might object.

The disregarding of our construction for the reason that the Organic Act of Puerto Rico does not require that budget bills be subdivided into parts and portions, is entirely unwarranted. Congress knew, as well as every body else knows, that under American Constitutional Law requiring a Legislative, an Executive and a Judicial Department in the Government, a budget bill, containing the appropriations for each one of those departments, must, forcibly, be divided into those three big parts or portions, and into as

many smaller portions as there are divisions and bureaus in each of the Departments.

Furthermore, the Organic Act of Puerto Rico itself divides the government of Puerto Rico into three branches: the Legislative, the Executive and the Judicial departments of said government, and the appropriations for each of them must necessarily constitute three different portions in the budget bill, and each of those big portions must be subdivided into as many smaller portions or parts as there are sections or subdivisions in each of those departments.

But what is more important still, is that the Court below cared nothing for what we said regarding the point that this interpretation, the one they have adopted in this case, is basically against the principles of American Constitutional Law, and contradicts the purpose of Sections 25 and 37 of the Organic Act of Puerto Rico regarding the point "that all local legislative power in Puerto Rico . . . shall be vested in . . . the Legislature of Puerto Rico".

See *Lukens* v. *Nye*, 105 P. 593; *Peebly* v. *Childers*, 217 P. 1049; *Strong* v. *People*, 220 P. 999; *Mills* v. *Porter*, 222 P. 428, and *Bengzon* v. *Secretary of Justice*, 299 U.S. 410, 416, supra.

WHEREFORE the petitioners pray this Honorable Court to render a judgment according to the prayer of the Petition in the present case.

San Juan, P. R., this 2nd day of June, 1950.

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Attorneys for petitioners.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	2
Statement	3
Argument	5
Conclusion	14

CITATIONS

Cases:

Abraham v. *Ordway*, 158 U. S. 416	11
Arjona v. *Winship*, 49 P. R. R. 50	7
Barber v. *City of Evanston*, 297 Ill. App. 396, 17 N. E. 2d 722	7
Bengzon v. *Secretary of Justice*, 299 U. S. 410	9, 11
Buell v. *Jefferson County Court*, 175 Or. 402	12
City of Paducah v. *Gillispie*, 273 Ky. 101	12
Commonwealth v. *Barnett*, 55 L. R. A. 882	8
Commonwealth v. *Barnett*, 199 Pa. 161	8, 10
Commonwealth v. *Bralley*, 69 Mass. 456	7
De Castro v. *Board of Commissioners*, 322 U. S. 451	11
De la Rosa v. *Winship*, 47 P. R. R. 312	4, 6, 7, 9, 12
Fergus v. *Russel*, 270 Ill. 304	8
Fitzsimmons v. *Leon*, 141 F. 2d 886	7, 12
Folmar v. *Brantley*, 238 Ala. 681	12
Great Western Telegraph Co. v. *Purdy*, 162 U. S. 329	11
Leon Parra v. *Fitzsimmons*, 61 P. R. R. 340	6, 7
People v. *Chicago Park District*, 296 Ill. App. 365, certiorari denied, 308 U. S. 575	13
Ponsa Pares v. *Winship*, 53 P. R. R. 871	7
Sancho Bonet v. *Texas Co.*, 308 U. S. 463	11
Soto v. *McLeod*, 56 P. R. R. 775	7
State v. *Forsyth*, 21 Wyo. 359	10
State v. *Witter*, 114 Ohio St. 357	13
Stong v. *People*, 74 Colo. 283	8
Terrao v. *Cordero* 67 P. R. R. (not yet officially translated in English)	6
Ugarte v *MacLeod*, 56 P. R. R. 809	7
United States ex rel. Arant v. *Lane*, 249 U. S. 367	12
Wheeling Bridge & Terminal Ry. v. *Reymann Brewing Co.*, 90 Fed. 189	11
Wood v. *Riley*, 192 Cal. 293	11

Statutes:

Cal. Const.:

Page

Art. IV, § 34 10

Mass. Const. Amend. LXIII:

§ 5 10

Organic Act of Puerto Rico (Act of March 2, 1917, 39 Stat. 951, 961, 48 U. S. C. 825):

Section 34 ..... 2, 3, 5, 7

Act of July 3, 1950, P.L. 600, 81st Cong., — Sess. 11

Miscellaneous:

54 Cong. Rec. 2256 9

Rule No. 39 of the Court of Appeals for the First Circuit 4

Rule No. 39(b) of the Court of Appeals for the First Circuit 11

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 135

PEDRO BLANCH, ET AL., PETITIONERS

v.

RAFAEL DE J. CORDERO, AUDITOR OF PUERTO RICO AND RAFAEL BUSCAGLIA, TREASURER OF PUERTO RICO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court for the Judicial District of San Juan, Puerto Rico (R. 20-24) is not officially reported in English. The opinion of the Supreme Court of Puerto Rico (R. 27-30) is not yet officially reported in English. The opinion of the United States Court of Appeals for the First Circuit (R. 45-48) is reported at 180 F. 2d 856.

JURISDICTION

The judgment of the Court of Appeals was entered on March 22, 1950 (R. 49). The petition for a writ of certiorari was filed on June 17, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether Section 34 of the Organic Act of Puerto Rico vests authority in the Governor of Puerto Rico to object to portions of items in a general appropriation bill and thereby to reduce the salaries of officers and employees of the Government of Puerto Rico fixed by the Legislature in such a bill.

2. Whether the court of appeals erred in refusing to set aside as "inescapably wrong" or "patently erroneous" the conclusion of the two Puerto Rican courts that this suit is barred by laches.

STATUTE INVOLVED

Section 34 of the Organic Act of Puerto Rico (Act of March 2, 1917, 39 Stat. 951, 961, 48 U. S. C. 825) provides in pertinent part:

> If any bill presented to the governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving of the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items, parts or portions thereof to which he objects, and the appropriation so objected to shall not take effect.

STATEMENT

On June 16, 1947, petitioners filed a petition for writ of mandamus against respondents, the Treasurer and Auditor of Puerto Rico, in the District Court for the Judicial District of San Juan (R. 1-18). In the complaint, petitioners alleged that on July 1, 1932, they had been officers and employees of the People of Puerto Rico, and that their salaries had been specified in the budget enacted by the Legislature of Puerto Rico for the fiscal year beginning July 1, 1932 (R. 2). Upon receiving the appropriation bill as passed by the Legislature, the Governor reduced each petitioner's salary by the amount set out in an appendix to the complaint (R. 2, 5-18). The Governor, petitioners claimed, had no legal authority under Section 34 of the Organic Act so to reduce their salaries, and hence, by so acting, "the Governor annulled each and every one of such items or salaries, which resulted in leaving the Government of Puerto Rico without the necessary appropriations for its support during the fiscal year 1932-33" (R. 2). Accordingly, petitioners claimed that their salaries should have been paid pursuant to the appropriation law for the prior fiscal year (R. 2-3).[1] They stated that their delay in bringing this action was "due to the fact that they have considered barred out, heretofore, their right to the claim herein

[1] Section 34 of the Organic Act also provides (48 U. S. C. 826):

> If at the termination of any fiscal year the appropriations necessary for the support of the government for the

made, because of two standing decisions of the Supreme Court of Puerto Rico" (R. 3-4), and prayed that the Auditor and Treasurer of Puerto Rico be ordered "to issue the pertinent warrants in [petitioners'] favor" and to pay the sums of money deducted from their salaries during the fiscal year 1932-33 (R. 4).[2]

After respondents filed their answer (R. 18-20), the District Court dismissed the complaint (R. 25). In its opinion, the court, relying particularly on the holding of the Supreme Court of Puerto Rico in *De la Rosa* v. *Winship,* 47 P. R. R. 312, held that "the Governor of Puerto Rico acted legally in making the deductions in the salaries of the [petitioners]" (R. 22). The court further held that petitioners' claim was barred by laches;

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ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be applicable, shall be deemed to be reappropriated item by item * * *.

[2] As a second cause of action, petitioners alleged that the Legislature "not having enacted any budget bill in the year 1931 to be in force during the fiscal year 1932-33, as it was its constitutional duty to perform, the budget bill enacted and approved in 1932 was made without any constitutional authority and * * * is * * *, in the judgment of plaintiffs, void" (R. 3). The District Court (R. 23) and the Supreme Court of Puerto Rico (R. 28-30) rejected this claim, as they did petitioners' other contentions. In their motion for reconsideration petitioners conceded the soundness of the Puerto Rican courts' holding on this point (R. 35). No assignment of error or argument thereto was made by petitioners (see R. 40-41) and, consequently, no question in regard to this claim was before the court below. See Rule No. 39 of the Court of Appeals for the First Circuit. The Court of Appeals stated that this contention "has been abandoned on this appeal" (R. 46, fn. 1).

it considered petitioners' delay of almost fifteen years as "entirely inexcusable", and noted that if their claim had been sound the delay "would have been very prejudicial to the interests of the People of Puerto Rico" (R. 24). The Supreme Court of Puerto Rico unanimously affirmed on both grounds (R. 27-30). On appeal, the court below categorically rejected petitioners' contention that Section 34 did not authorize the Governor to reduce items in an appropriation bill (R. 47). It also refused to set aside as "inescapably wrong" or "patently erroneous" the conclusion of the Puerto Rican courts on the local law question of laches (R. 48).

ARGUMENT

1. (a) Petitioners urge, on the basis of a detailed grammatical and dictionary analysis of the language employed, that the word "thereof" in Section 34 of the Organic Act of Puerto Rico (*supra*, p. 2) refers back to the singular "bill" rather than the plural "items", and, consequently, they contend, that that Section authorizes the Governor of Puerto Rico to object not to parts or portions of items in an appropriation bill but only to entire items (Pet. 9-21). In effect, petitioners claim that Section 34 should be construed as if it read (see Pet. 10):

> If any bill presented to the governor contains several items of appropriation of money, he may object to one or more of such items or

> any part or parts, portion or portions *of the bill,* while approving of the other portion of the bill.

The categorical rejection by the court below of this contention was plainly correct. Petitioners conceded below (R. 48) that Section 34, read in a normal manner, vests authority in the Governor to reduce items of appropriations, including salaries of governmental officers and employees fixed by general appropriation bills. The Supreme Court of Puerto Rico has, at least since 1934, so read the statute. In *De la Rosa* v. *Winship,* 47 P. R. R. 312, that court rejected the very argument here urged by petitioners, with the comment (47 P. R. R. 313-314):

> When the meaning of words used in a statute is perfectly plain, effect should be given to that meaning even under the rule of strict construction which, where a grant of power is involved, is applicable only in case of doubt as to what the legislature intended. When Congress said that the Governor "may object to one or more of such items, or any part or parts, portion or portions thereof" it meant, we think, that "he may object to one or more of such items, or any part or parts, portion or portions" of such items.

That Court subsequently followed this reading of Section 34, in accordance with its plain language, in *Leon Parra* v. *Fitzsimmons,* 61 P. R. R. 340, and *Terrao* v. *Cordero,* 67 P. R. R. (not yet officially

translated in English); cf. *Arjona* v. *Winship,* 49 P. R. R. 50; *Ponsa Pares* v. *Winship,* 53 P. R. R. 871; *Ugarte* v. *MacLeod,* 56 P. R. R. 809; *Soto* v. *MacLeod,* 56 P. R. R. 775. Despite petitioners' statement (Pet. 27), the Puerto Rican Supreme Court in the *Leon* case expressly affirmed its *De la Rosa* holding with the note that in the *De la Rosa* case "the matter was given most careful consideration" (61 P. R. R., at 344), and in affirming the *Leon* decision, the Court of Appeals for the First Circuit stated in regard to the language of Section 34 here involved that "the intention of Congress to empower the Governor to scale down as well as disapprove items in appropriation bills is clear." *Fitzsimmons* v. *Leon,* 141 F. 2d 886, 888. The Court of Appeals' decision in the instant case merely adopts as holding its prior *dictum* in the *Leon* case (R. 47).

Moreover, there is no grammatical or legal obstacle to "thereof" 's having a plural, rather than a singular, antecedent. In *Commonwealth* v. *Bralley,* 69 Mass. 456, the word "thereof" was found to refer to "spirituous or intoxicating liquors." See also *Barber* v. *City of Evanston,* 297 Ill. App. 396, 17 N. E. 2d 722, where the antecedent was clearly plural. The congressional intent that "thereof" refer back to "items" is clear from the succeeding sentence of Section 34. The structure of that sentence, which provides "In such case [where the Governor objects] he shall append to

the bill, at the time of signing it, a statement of the *items, parts or portions thereof,* to which he objects" (italics supplied), leaves no room for doubt that "thereof" refers to "items" as its antecedent.

Construing Section 34 to authorize the Governor of Puerto Rico to veto parts of items in appropriation bills also conforms with the provision's legislative history. As pointed out in a note to *Commonwealth* v. *Barnett,* 55 L. R. A. 882, 885, many states have constitutional provisions permitting the Governor to veto "any item or items" of an appropriation bill or "one or more of such items" or "one or more items". These provisions have been construed by the majority of state courts to enable the Governor to object only to entire items of an appropriation bill (see, *c.g., Stong* v. *People,* 74 Colo. 283; *Fergus* v. *Russel,* 270 Ill. 304), although a few courts have held that the Governor, in addition, could reduce the items. *E.g., Commonwealth* v. *Barnett,* 199 Pa. 161. Originally, the proposed Organic Act followed the language of these state constitutional provisions by providing that the Governor of Puerto Rico could veto "one or more of such items" of an appropriation bill. This pattern was departed from, however, by the adoption of an amendment, proposed on the floor of the Senate by the Senate Committee on the Pacific Islands and Porto Rico, which inserted the phrase "or any part or parts, portion or portions thereof" after the word "items" in the first sentence

of Section 34, and the phrase "parts or portions thereof" after "items" in the second sentence. 54 Cong. Rec. 2256. Although no discussion accompanied the amendment, it seems clear that by so inserting these phrases Congress did not intend merely to add meaningless and redundant verbiage to the statute, which would be the effect under petitioners' construction, but rather sought to avoid the constructional difficulties experienced under the various state provisions and to make it clear that the Governor was authorized to reduce the individual items in an appropriation bill.[3]

(b) There is no merit to petitioners' further contentions, assertedly based on *Bengzon* v. *Secretary of Justice,* 299 U. S. 410, that the action of the Governor in reducing items of an appropriation bill is "affirmative legislation by executive edict,"[4] and that such a power in the Executive would violate

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[3] As explained by the Supreme Court of Puerto Rico in the *De la Rosa* case (47 P. R. R. at 315):

> Congress was aware of the stereotyped phraseology of the state constitutions and of the interpretation placed thereon by the state courts. Instead of following any of these precedents it elected to establish an unmistakable innovation and in its choice of words left but little to the imagination.

[4] This phrase was used by this Court in the *Bengzon* case (299 U. S. at 414) with reference to a veto by the Executive of Sections of a bill passed by the Philippine Legislature which the Court held dealt with general legislation and was not an appropriation bill (299 U. S. at 414). The Court further held that even if the bill could be characterized as an appropriation bill, the particular section which the Governor-General of the Philippines had sought to veto was not an appropriation item, but a general provision of law

"the basic principles of American Constitutional Law," since it allegedly results in an improper encroachment by the Executive upon the Legislative Branch (Pet. 8, 21). These contentions are equally applicable when the Executive objects to entire items of an appropriation—a power which, under petitioners' own construction of Section 34, the Governor of Puerto Rico admittedly has. In addition, at least two states have adopted constitutional provisions specifically authorizing the Governor to reduce the items in an appropriation bill (Cal. Const. Art. IV, § 34; Mass. Const. Amend. LXIII, § 5), and the highest courts of two other states have held that the Governor had such authority notwithstanding the absence of specific constitutional grant. *State* v. *Forsyth,* 21 Wyo. 359; *Commonwealth* v. *Barnett,* 199 Pa. 161. It is clear, therefore, that the authority in the Executive to reduce items of an appropriation bill does not violate any basic principles of American constitutional law. On the contrary, such practice may be thought to serve a very salutary purpose, for as a result the Governor "is not forced to choose between vetoing

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which happened to be put into an appropriation bill. The Court went on to state (299 U. S. at 415):

> * * * Provisions granting power to the executive to veto an item or items of an appropriation bill are to be found, in various forms of expression, in many of the state constitutions. Their object is to safeguard the public treasury against the pernicious effect of what is called "log-rolling"—by which, in order to secure the requisite majority to carry necessary and proper items of appropriation, unnecessary or even indefensible items are sometimes included.

an item of appropriation for a meritorious purpose, or approving it for an excessive amount. Without entirely rejecting it, he may reduce the amount provided for to a sum in accord with his own view as to the need for the expenditure." *Wood* v. *Riley,* 192 Cal. 293, 299; see, also, *Bengzon* v. *Secretary of Justice,* 299 U. S. 410, 415.[5]

2. The court below properly refused to set aside the conclusion of the two Puerto Rican courts that this suit must fail for the further reason that it was barred by laches, which, contrary to petitioners (Pet. 22-25), is clearly a question of local law (*Abraham* v. *Ordway,* 158 U. S. 416; *Wheeling Bridge & Terminal Ry.* v. *Reymann Brewing Co.,* 90 Fed. 189 (C. A. 4); cf. *Great Western Telegraph Co.* v. *Purdy,* 162 U. S. 329). Not only have petitioners failed to show that this ruling is "inescapably wrong" or "patently erroneous" (Rule 39(b) of the Court of Appeals for the First Circuit; *Sancho Bonet* v. *Texas Co.,* 308 U. S. 463, 471; *De Castro* v. *Board of Commissioners,* 322 U. S. 451), but we believe it to be easily demonstrable that the holding was entirely sound.

Petitioners do not claim that their application for a writ of mandamus was seasonably filed de-

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[5] On July 3, 1950, the President approved Pub. Law No. 600, 81st Cong., an Act "to provide for the organization of a constitutional government by the people of Puerto Rico", which enables Puerto Rico to adopt a constitution in substitution for the present Organic Act. The Act of July 3 provides that, upon the going into effect of the new constitution, Section 34 of the Organic Act shall be repealed.

spite the 15-year interval between the filing and respondents' alleged default or neglect of duty (*United States ex rel. Arant* v. *Lane,* 249 U. S. 367; *City of Paducah* v. *Gillispie,* 273 Ky. 101; *Buell* v. *Jefferson County Court,* 175 Or. 402), nor do they attempt any longer to discharge the burden of proving a valid excuse for their failure to make a timely application for enforcement of their alleged rights (*Folmar* v. *Brantley,* 238 Ala. 681; *United States ex rel. Arant* v. *Lane, supra*).[6] Instead, they attack the conclusion of the Puerto Rican courts solely on the ground that respondents were not prejudiced by their delay (Pet. 25-27). But it is clear that prejudice has in fact resulted from such delay. As the Puerto Rican District Court pointed out (R. 24):

> This inactivity of the plaintiffs is entirely inexcusable. If they had been right as to their main argument in the case, the delay in filing the complaint would have been very preju-

[6] In their brief below, petitioners offered what they characterized as "fairly good" (Appellants' Br. 26) reason for their delay, namely, that after the *De la Rosa* case, no Puerto Rican attorney would handle a claim of a governmental employee whose salary had been reduced, since such a claim was considered a waste of time and effort (Appellants' Br. 26). Petitioners' attorney likewise apparently thought for a long time that the claim was without foundation "until recently, about three years ago, when I decided to study the case deeply in order to see if he had a just and reasonable cause of action" (Appellants' Br. 26). Such reason for delay, without any intervening changes of circumstances except the continued affirmance of the *De la Rosa* case by the Supreme Court of Puerto Rico and the statement by the Court of Appeals for the First Circuit in the *Leon* case (*supra,* p. 7), hardly constitutes a valid justification.

> dicial to the interests of the People of Puerto Rico and to the fulfillment of the duties of the defendants, because the Governor of Puerto Rico has continued, after 1932, effecting in the budget bill, deductions on the salaries of officers and employees of the Government, thus accumulating a big sum of money that would have to be paid from the treasury of Puerto Rico, all because of the indolence, inactivity and inexcusable delay on the part of the plaintiffs. Attitudes like the one adopted by the plaintiffs can not be protected by the courts of justice. Considering all the circumstances concurring in the present case, the doctrine of "laches" is entirely applicable. * * *

Since the Governor has reduced governmental salaries in many instances since 1932, it is very probable, were petitioners correct, that the Puerto Rican government would be deluged at one time by a tremendous backlog of claims. Clearly, this would cause great hardship to the government and taxpayers of Puerto Rico. Cf. *People* v. *Chicago Park District,* 296 Ill. App. 365, certiorari denied, 308 U. S. 575; *State* v. *Witter,* 114 Ohio St. 357.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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